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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 10/698,231      | 11/01/2003  | Rodolfo Fernandez JR. |                     | 2309             |

7590 05/17/2004  
RODOLFO FERNANDEZ JR.  
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EXAMINER

MILLER, BENA B

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3712

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                                    |  |
|------------------------------|-------------------------------|------------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/698,231 | Applicant(s)<br>FERNANDEZ, RODOLFO |  |
|                              | Examiner<br>Bena Miller       | Art Unit<br>3712                   |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to because figures are double numbered. In other words, Figure 1 is labeled as "Figure 1" and each figure in figure 1 has a label as "figure". Applicant can either number the figure as "Figure 1" or label each figure as "Figure 1A-1B". Furthermore, Figure 6 has been misnumbered as figures 6A-6H and 6J and should be numbered as 6A-6I. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification describes various retaining means; however, it is not clear how some of the retaining means cause the candy to rock, swing, swivel, etc. It is not clear in the specification how the retaining means (104

of the disclosed specification) causes the candy to rock, swing, swivel, etc—especially figures 6A-6H, 6J and 7A-7H.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with indefiniteness that is too numerous to point out in every instance.

Regarding claim 1, it is not clear in the specification how the retaining means of figures 6A-6H, 6J and 7A-7H causes the candy to rock, swing, swivel, etc. The specification describes two retaining means—a retaining means (104) and a sliding retaining means (702). It is not clear which means applicant is refer to as the retaining means. Further, the specification discloses on page 18, the retaining means (104) is describe as a thin round fin like grapple; however, further on page 18, the specification discloses a grapple (104). It is not clear if applicant considers the retaining means as a grapple or a grapple like thin fin. If applicant considers the retaining means as a grapple, it appears that applicant defined grapple contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. The term “grapple”by the claim to mean “a retaining means for candy”, while the accepted meaning is “1 a. An iron shaft with claws at one end, usually thrown by a rope and used for grasping and holding, especially one for drawing and holding an enemy

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ship alongside<sup>1</sup>." The term is indefinite because the specification does not clearly redefine the term.

In several instances, the claims are entirely functional. In this instance, claims 3-8 and 12-23 recite limitations that are entirely functional. It is not clear how the functional limitations further structurally limit the claimed toy lollipop.

Regarding claims 2 and 9, the claim recites the candy is made in one or more parts; however, the claim also recites that the parts are properly joined together. It is not clear how one part of the candy can be properly joined together. It appears that the candy is made of two or more parts.

Regarding claim 10, it is not clear of the retaining means of line 2 of the claim is the same as the retaining means recited in claim 1.

Regarding claim 11, it appears the claim recites a method. On the other hand, it appears that the claim recites an apparatus. It is not clear whether the claim is a method or apparatus. Clarification is required in response to this Office Action.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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<sup>1</sup>The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

Claims 1-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Liaw.

Liaw teaches in the figures, as best understood, a dancing toy lollipop comprising at least one movable candy with an open cavity ( fig.3), a candy holder (fig.3) and a retaining means (76).

Regarding claim 2, Liaw further teaches one movable candy (16) and an open assembling cavity (fig.3).

The examiner takes the position that the functional recitations of the claims 3-8 and 12-23 are inherently taught by the device of Liaw.

Regarding claims 9-10, Liaw further teaches a lower grip portion (fig.3) and a top end attachment (fig.3).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Davis teaches safety lollipop. Coleman teaches a novelty candy holder and dispenser. Filo teaches a sound-transmitting amusement device. Coleman teaches a swirlie pop. Coleman teaches a nearly headless nick noisemaker candy toy.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643. The examiner can normally be reached on Monday-Friday.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bena Miller  
Examiner  
Art Unit 3712

bbm  
May 13, 2004